

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

**Anthony A. Shah-Nazaroff, et al.**

Application No.: 09/580,305

Filed: May 26, 2000

For: METHOD AND APPARATUS FOR  
ORDERING ENTERTAINMENT  
PROGRAMS FROM DIFFERENT  
PROGRAMMING TRANSMISSION  
SOURCES

Examiner: Jason P. Salce

Art Group: 2421

Confirmation No.: 9133

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REPLY TO EXAMINER ANSWER

This Appellant's Reply Brief is being filed under 37 CFR 41.41 in furtherance of the Notice of Appeal (filed on April 21, 2009) and of the Appellant's Brief (filed on June 16, 2009), and is further being filed in response to the Examiner's Answer (mailed November 24, 2009), hereinafter, "Examiner's Answer."

In addition to Appellant's arguments set forth in the Appeal Brief, please further consider the following remarks in reply to the Examiner's Answer.

Remarks

In the Examiner's Answer, in replying to Appellant's arguments the Examiner answered:

by stating that the upgraded media features is 'for' a programming transmission (which is an intention of use), the claim does not specify in what way the upgraded media feature effects the programming transmission. Therefore, by transmitting the upgraded media feature/supplemental data with the television programming transmitted to the client device in Figure 1, Majeti teaches that the upgraded media feature/supplemental programming is "for" a programming transmission.

[Examiner's Answer, page 8.]

Appellant respectfully submits that the Examiner continues to misconstrue the claim language as well as the cited Majeti reference. Appellant first notes that “for a programming transmission” is not language directed toward an intended use. The “a programming transmission” language instead identifies an entity, one that is further identified in the later-recited claim language “the programming transmission and upgraded media feature to be provided from the one programming transmission source” recited in claim 1. Rather than implying intended use, when viewing this recitation in light of the remaining claim recitations (viewing the claim as a whole) and the specification, it is clear that the upgraded media feature, by being “for” the programming transmission, is directly associated with the particular programming transmission.

Secondly, Appellant respectfully argues that the mere fact of transmitting information alongside television programming does not, by itself, serve to associate the information with the programming sufficiently to make the information “an upgraded media feature for a programming transmission” as recited in claim 1. In the Examiner’s rebuttal, the Examiner points only to language in column 9 of Majeti, which states that “information will then be combined with other RF channels and then transmitted over cable 36 to the user’s customer premise equipment.” [Majeti, at column 9, lines 40-42.]

However, as Appellant has previously noted, Majeti explicitly teaches that the information is split off from the cable programming and provided to a separate user device and that this teaching is directly contrary to the recitation that the upgraded media feature is for the programming transmission. [Appeal Brief, at page 7.] Additionally, in a passage immediately following the passage cited to by the Examiner, Majeti notes that the information is transmitted and displayed on a monitor associated with a personal computer, not along with any television programming that may be displayed. [Majeti, at column 9, lines 54-59.]

Indeed, in one passage, Majeti makes clear that it does not necessarily know what programming is being displayed at the time of one of Majeti’s alerts:

Assume in this example that the user is not present at the personal computer and hence, does not send the appropriate response message. . . . If the user does not respond in the predetermined time, *control processor 48 initiates an interrogation request . . . requesting identification of the RF channel to which the set top box 126 is tuned*. The personal computer initiates the command request on channel 136 via communication controller 164 and channel 132 to set top box 126. *The set top box responds to the request by transmitting an identification of*

*the channel to which the set top box is tuned and hence, the cable television RF channel being displayed on the user's television 130. . . . The control processor, . . . causes the controller to initiate a command sequence on channel 166 causing modulator 168 to be tuned to the cable television RF channel being viewed by the user. . . . [T]he modulator [generates] an RF signal which is transmitted to combiner network 174 causing a notice message to be combined with the incoming RF signal from splitter 150 . . . .*

[Majeti, at column 12, lines 7-43.] As the passage shows, Majeti's alert information is provided regardless of what channel is being tuned to by a viewer, and therefore regardless of what programming is being viewed. Appellant respectfully submits, therefore, that Majeti cannot teach "an upgraded media feature for a programming transmission" as argued in the Examiner's rejections.

Additionally, Appellant respectfully submits that the Examiner's use of Majeti in rejecting the "one of a plurality of programming transmission sources" claim language is inconsistent. In the Examiner's Answer, at page 10, the Examiner alleges that the "programming transmission sources" language is read upon by various non-source entities described in Majeti, including "modems 54A-54N, enhanced service providers 10A-10N, or cable distribution headends 30A-30N" from Figure 1. Then, in rejecting the "automatically coordinating purchase . . . of the upgraded media feature for the programming transmission *with one of a plurality of transmission sources*" language of claim 1, the Examiner states:

interpreting "one of the plurality of programming sources" as the enhanced service providers 10A-10N is a proper broadest reasonable interpretation.

[Examiner's Answer, at page 10.]

In the following portion of the Answer, however, the Examiner justifies his rejection of "automatically coordinating provision . . . of the upgraded media feature for the programming transmission, the programming transmission and upgraded media feature *to be provided from the one programming transmission source*" using a different entity from Majeti:

In regards to this portion of the claim, the Examiner has chosen "the one programming transmission source" to be the cable distribution headends 30A-30N . . . .

Appellant respectfully submits that, as the claim language makes clear, "*the one programming transmission source*" recited in the last clause of claim 1 refers back to the "with

“one of a plurality of transmission sources” language in the penultimate clause of claim 1. As such, these refer to the same entity, and it is improper to cite two wholly different portions of Majeti against this language.

Furthermore, Appellant respectfully notes that either one of the two different entities of Majeti which are cited to in the rejection cannot satisfy both portions of the claim language. For example, Majeti’s “cable distribution headends 30A-30N” cannot support “coordinating purchase . . . of the upgraded media feature” because the headends merely “transmit” the alerts and television programming of Majeti, as acknowledged in the Examiner’s Answer on page 11. Additionally, Majeti’s “enhanced service providers 10A-10N” cannot support “coordinating provision . . . [where] the programming transmission and upgraded media feature [are] to be provided from the one programming transmission source” because Majeti clearly shows that Majeti’s television signals are provided by the cable sources 32, and not its enhanced service providers 10A-10N. [Majeti, at Figure 1.]

**Conclusion**

Accordingly, for the above and reasoning set forth in more detail in the Appeal Brief, Appellant respectfully maintains that the Examiner's rejections are in error, and respectfully requests the rejections be reversed, and the remaining pending claims be allowed.

It is believed that no further fees are required for this submission. However, should that be necessary, please charge Deposit Account No. 500393. In addition, please credit any overages to the same account.

Respectfully Submitted,

SCHWABE, WILLIAMSON & WYATT, P.C.

Dated: January 25, 2010

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